

the High Court proceedings relate to an alleged breach of confidence, but all of the relevant acts took place in the USA, and involved exclusively American entities who had entered into a Delaware law non-disclosure agreement (which is relied upon by the referrer).

- 4 In the event that the High Court decides that its proceedings should not be dismissed or stayed, Frito-Lay agrees that the comptroller should decline to deal with this reference under section 12, so that all the matters between the parties can be heard before the High Court. But they add that in their view, it would not be appropriate for the comptroller to decline to deal (or even decide this issue) until the dispute concerning the jurisdiction of the High Court has been concluded. They say there must at least be a possibility that the High Court will decide that the *forum conveniens* is the Federal Court in the USA. For this reason, Frito-Lay asks the comptroller to stay these proceedings for six months.
- 5 According to Innovia, Master Bragge (UK High Court) has already considered the question of jurisdiction and has granted them leave to serve the Claim Form and Particulars of Claim out of jurisdiction. But this was presumably before Frito-Lay contested the jurisdiction of the High Court.
- 6 Having carefully considered all the arguments on the official file, and the criteria indicated in *Luxim Corp v Ceravision Ltd*¹, I am satisfied that the comptroller should decline to deal with this reference. This will reduce the number of proceedings involving Innovia and Frito-Lay, and allow the High Court to fully resolve the dispute over jurisdiction. In reaching this decision, I have also noted that Innovia has given an undertaking to amend its statement in these proceedings to remove the claim to entitlement of the European patent applications upon the High Court becoming seised of the corresponding claim under section 82; so there would be no British or European patent applications left in this reference.
- 7 I have also considered Frito-Lay's suggestion that I should not decline to deal **at this time** in case the High Court declines jurisdiction; but it seems to me that if the High Court does decline jurisdiction in favour of the Federal Court of the USA (as *forum conveniens*), then it is unlikely that proceedings before the comptroller will be any more appropriate. For all these reasons, and in accordance with section 12(2), the comptroller declines to deal with this reference.

S PROBERT

Deputy Director acting for the Comptroller

¹ *Luxim Corp v Ceravision Ltd* [2007] RPC 33